

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES MEMMINGER,

:

Petitioner, : 05 Civ. 471 (WHP) (MHD)

-against- : ORDER

THE PEOPLE OF THE STATE OF
NEW YORK, et al.,

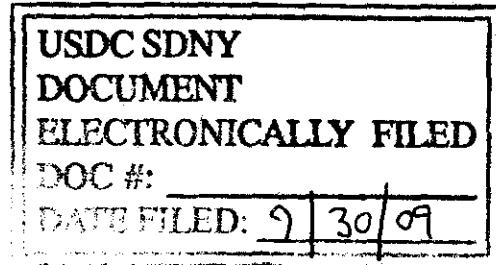
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Defendant.

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X

WILLIAM H. PAULEY III, District Judge:



The above-captioned case was referred to Magistrate Judge Michael H. Dolinger.

As part of the referral, he issued a report and recommendation ("report"). Magistrate Judge Dolinger filed his report describing the reasons why the petition should be denied, the case should be closed, and a certificate of appealability should not issue, and sent it to the parties on September 9, 2009. As of this date neither party has submitted any objection to the report nor requested an extension of time in which to do so. This Court has reviewed the report, and finds that the report is not facially erroneous.

Accordingly, this Court adopts Magistrate Judge Dolinger's thorough and well-reasoned Report in its entirety and denies Memminger's petition. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not be issued. See 28 U.S.C. § 2253(c). In addition, this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See

Coppedge v. United States, 369 U.S. 438 (1962). The Clerk of the Court is directed to terminate all pending motions and mark this case as closed.

Dated: September 30, 2009
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

Copies mailed to:

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